# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 350.

CITY OF LOUISVILLE, APPELLANT,

*vs.*

BANK OF LOUISVILLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 15, 1898.

(16,944.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1898.

1 *Transcript of Record.*

Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on 21st day of February, 1898.

Present: Hon. John M. Harlan, circuit justice, and Hon. Wm. H. Taft and H. H. Lurton, circuit justices.

BANK OF LOUISVILLE
*vs.*
THE CITY OF LOUISVILLE.

Be it remembered that heretofore, to wit, on the 17th April, 1897, came the complainant, by Humphrey & Davie, its counsel, and filed in the clerk's office its bill of complaint in the above-named cause against the defendants herein, which bill is as follows, to wit:

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

The president, directors and company of the Bank of Louisville bring this their bill of complaint against the city of Louisville. And thereupon, the complainant says:

I.

The complainant is a corporation duly created by and organized under the laws of the State of Kentucky, and a citizen of said State.

2 II.

The defendant, The City of Louisville, is a municipal corporation duly created by and organized under the laws of the State of Kentucky.

III.

The complainant was created a body politic and corporate by an act of the General Assembly of Kentucky, approved February 2, 1833. By this act it was given full power and authority to acquire, hold, possess and enjoy all such real estate, goods, effects and chattels as should be convenient for the transaction of its business, and which might be conveyed to it as surety for any debt. It was directed that it should have and keep its principal office and place of discount in the city of Louisville and that it might establish branch offices of discount and deposit in other parts of the State. Its business was declared to be that of loaning money, discounting promissory notes and bills of exchange, and it was given authority to issue bills or bank notes, payable to bearer, on demand, at any of its offices of discount and deposit, but not of less denomination than five dollars. It was given the general powers of a banking corporation.

## IV.

By its original charter, which, as aforesaid, was approved February 2, 1833, it was provided that the complainant should continue a body politic and corporate until the first day of January, 1853. By an act approved February 16, 1838, it was provided that the complainant should have authority to establish and continue either one or two branches with a reasonable amount of capital, and if it should establish the branch within three years, its charter should be extended four years and on the establishment of one second branch the charter should be extended five additional years. The complainant established within the time and under the terms of said act, two branches, one at Paducah and one at Flemings-
3 burg, and in this way, its charter life was extended nine years. By an act of the General Assembly of Kentucky, approved February 15, 1858, it was provided that the charter privileges of the complainant should continue in full force for twenty years from the first day of January, 1863, but this extension was declared to be subject to certain restrictions, among others, that the bank should be subject to all the restrictions, limitations, penalties, conditions, and duties imposed upon it by this act of incorporation and the acts amendatory thereto; that the stockholders should within one year from the 10th of May, 1858, by a vote of a majority given at a stated or called meeting, determine whether they would accept the proposed extension; and the said bank accepting the provisions of the act, was required to notify the governor of the Commonwealth of the acceptance by the certificate of the president and directors of such bank, and when such notice was thus given, the act was to be considered in full force and effect.

There were other provisions in this act of extension not necessary to be here mentioned, but the complainant fully complied with all of them, and, among other things, complied with the requirements of the acceptance of the act by its stockholders, and of the certificate of the president and directors of such fact.

By an act of the General Assembly of Ky, approved May 1, 1880, and entitled "An act to extend and continue the charter of the Bank of Louisville," it was recited that "Whereas, it is represented to this General Assembly that the charter of the Bank of Louisville will expire and cease on the first day of January, 1883, and in order to renew and continue and extend the same" it was enacted that the charter rights and privileges of the complainant should continue and extend in full force and effect for twenty years from and after the said first day of January, 1883.

It is not necessary to set out in full the terms and conditions except to state that one of these was to the intent that before the act should go into effect it must be approved and accepted by a majority in interest of the stockholders of complainant, that
4 this was done and the notice of this action required by the act was given; and, so it is, that its charter life will not expire until January, 1903.

V.

By the sixth section of the original act chartering the complainant it was provided among other things, that the cashier of the bank "shall on the first day of July, 1834, and on the same day annually thereafter pay unto the treasurer of the State twenty-five cents on each share held by the stockholders in said bank, which shall be in full of all tax or bonus on said bank, provided that the legislature may increase or reduce the same; but at no time shall the tax imposed on said stock exceed fifty cents on each share held in said bank."

By an act approved February 12, 1836, entitled "An act to increase the revenue," the legislature exercised the rights reserved in the above section, and imposed a tax of fifty cents on each share of stock in the complainant, a taxation then largely in excess of the ordinary rate of taxation paid by other moneyed capital or property in the State of Kentucky.

The complainant paid, each year, the tax thus levied upon it, down to July 1, 1886, from which time it has paid a different amount, as will hereinafter be explained.

VI.

The complainant says that by the settled course of decision of the highest court of this State the meaning of these provisions in its charter has been fixed and determined; that on November 1, 1838, it was determined by the court of appeals of Kentucky (which is the highest court of said State) that this language prevented the Commonwealth from taxing the stockholders of the bank, and constituted a contract with the State, which was inviolable and a limitation on the legislative power to tax the stock of the bank or its property; that by a decision rendered by the said court of appeals on the 24th of November, 1869, it was determined that this language meant to include taxation by any of the municipal subdivisions of the State, and prevented such municipal subdivisions from taxing the real estate of the bank although situated within their boundaries.

By a decision rendered by the same court on June 5, 1888, it was determined (confirming the judgment of the Franklin circuit court) that the said 15th section as aforesaid, constituted a contract between the complainant and the State, by which the State would not tax the complainant a greater rate than fifty cents on each one hundred dollars of stock; that this included all taxation of all kinds—State, county and municipal—and upon all kinds of property of the said bank, and that the said several acts extending its charter life were to be taken as not subject to repeal by the legislature.

VII.

By an act approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the 1st day of July, of each year, make report of their

condition to the auditor, and should pay into the State treasury seventy-five cents on each share of their capital stock, and should, in addition, pay into said treasury on their surplus, undivided profit and accumulation in excess of 10 per cent. of their capital stock, a tax at the same rate as the real property should be assessed; and it was distinctly provided by the act that the said taxation should be in full of all tax—State, county and municipal, except that the real estate and buildings owned and used by the banks in conducting their business should not be exempted from tax for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes, as other real estate was taxed. As a condition to its operating upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. Each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as hereinafter provided, and waive and release all right under the act of Congress or under the charters of the State banks, to a different mode or a smaller rate of taxation; which consent and agreement to and with the State of Kentucky shall be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth; and said agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said taxation shall be paid, during the corporate existence of the bank."

The consent provided for by this act, and the notice to the governor, were further required to be given before the next meeting of the General Assembly; provided, the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the complainant on May 2, 1887, a quorum of the stockholders and a majority thereof being present, such stockholders, and a majority in interest thereof, did give their consent to the levying of said tax, and to the waiver and release of all right under its charter to a different mode of and a lower rate of taxation; and said consent of the complainant to the waiver and release aforesaid, and the said agreement, was certified in writing, under the seal of the bank, by the proper corporate authority, to the governor of the Commonwealth, and delivered to him before the next meeting of the General Assembly after the passage of said act. The complainant files herewith as part hereof a duly certified copy of such resolution, consent and agreement marked Ex.

VIII.

The complainant, through its cashier, made its report and paid into the State treasury, on July 1, 1886, the full tax required by the act described in the foregoing paragraph, and which is commonly

known as the "Hewitt act"; and, in conformity with said
7 Hewitt act, has made its report in proper form to the auditor of public accounts on the 1st day of July in each and every year up to this time; and, until the year 1893, paid into the State treasury, on or about the 1st day of July of every year from 1886 the full tax required by the said Hewitt act; being seventy-five cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State, upon its surplus undivided profits and accumulations in excess of 10 per cent. of its capital stock. These reports continued to be made by the complainant; but on July 1, 1893, the auditor refused to receive the tax under the Hewitt law, although the complainant tendered the same. He refused to receive it on the 1st day of July, 1894, although the complainant again tendered the same. The complainant paid the same about the 1st of July, 1895, and on or about the 1st of July, 1896, and in the spring of 1896, at the request of the auditor, and after certain litigation hereinafter mentioned had been determined in its favor, paid to the auditor the difference between the amount paid by it on July 1, 1893, and July 1, 1894, and the amount which it tendered at these times and which was the amount due under the Hewitt law; so that it is now true that the complainant has every year, down to and including 1895, paid the full tax called for under its charter; and from 1886 to 1896, the full tax called for under the Hewitt law. It has, also during this period (1886 to 1896) paid in full to the municipalities where its banking-houses are situated, the full county and municipal tax thereon.

## IX.

The legislature of Kentucky passed an act which went into force on November 11, 1892. The third article of said act dealt with the assessment of certain corporations, among others, banks. By this act it was provided in substance that every incorporated bank shall, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county,
incorporated city, town or taxing district where its franchise
8 may be exercised. The auditor, treasurer and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is provided that in order to determine the value of the franchise the banks shall each file reports on or before the 1st day of March in each year, which reports shall be made up to include the 31st day of the preceding December. These reports are to be verified by the chief officer of the bank, and show the following facts: The name and principal place of business of the bank; the amount of capital stock; number of shares; amount of stock paid up; nominal and real value thereof; highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement is required to be made; amount of surplus funds and undivided profits, and the value of all other assets; total amount of indebtedness as principal;

amount of gross or net earnings or income, including interest on investments, and income from all other sources for twelve months next preceding the 31st day of December of the year in which the statement is required to be made; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State; and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale; and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized and directed to fix the value of the capital stock of the bank, and from the amount thus fixed, to deduct the assessed value of all tangible property assessed in the State or in the counties where situated; and the remainder thus found is to be the value of the corporate franchise subject to taxation under the said act.

It is further provided that the said board shall apportion the value of such franchise among the several taxing jurisdictions entitled to a share of such tax.

It is further provided that the auditor of the State, at the expiration of thirty days after the final determination of such values, shall certify to the county clerk of the counties where any
9 portion of the corporate franchise of such banks shall be liable to local taxation, the amount thereof liable for county or State taxes; and such certificate is, by the county clerk, to be filed in his office, and by him certified to the collecting officer of the county and city for collection.

It is further provided that the said taxes assessed by the State board of valuation and assessment shall be due and payable on July 1st succeeding such report.

It is further provided that in the event the bank fail to make such report and pay such tax, a penalty of 10 per cent. on the amount of the tax shall be attached, and thereafter such tax shall bear interest at the rate of 10 per cent. per annum; and any bank or trust company failing to pay its taxes, penalties and interest after becoming delinquent, is to be deemed guilty of a misdemeanor and upon conviction is to be find for each day it remains unpaid; to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction.

X.

Your complainant says that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demand- of the complainant and of every other bank and trust company in the city of Louisville, a tax equal to four per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville in behalf of the city against all of said banks and trust companies including your complainant At that date the tax upon the gross receipts of the banks, if enforceable, was pay-

able to the sinking fund of the city of Louisville, and with a view of embarrassing the sinking fund of the city of Louisville as little as possible, the banks through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one part and the banks and trust companies of the city of
10 Louisville, including your complainant, upon the other, that pending the litigation which by the agreement was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

1. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the Hewitt bill. This sum it was provided should be an actual payment and not to be repaid under any circumstances, but its payment was not in any manner, or to any extent to prejudice the banks or trust companies paying it, or be taken as a waiver of any legal right which they might have in the premises.

2. In addition to making the above payments the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum which added to said payment would equal four per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee, required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

3. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to four per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

4. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay, and diligently prosecute such actions as might be necessary to settle and adjudge the right and liabil-
11 ities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them or any of them for doing business without license.

The substance of this agreement was spread at large upon the records of the sinking fund, and a copy thereof is filed herewith as part hereof, marked —.

As further evidence of the contract at that time made between the City of Louisville and its sinking fund, and the various banks and trust companies, including your complainant of the city, it was agreed

in writing by said parties in substance that in order to effectually test the question as to all of said banks and trust companies they were divided into three clauses, it being understood that all who accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It was understood that the trust and title companies which had accepted the provisions of the Hewitt bill would fall in class B above named.

It was further agreed that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing the contract and the validity thereof under the Hewitt bill that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the Hewitt bill.

This agreement is signed by the president of the sinking fund, and by the attorney for the city under the authority and direction of the mayor and board of sinking fund commissioners, and by the counsel who represented the banks in said litigation.

12 On the faith of this agreement as outlined in the resolution spread upon the records of the sinking fund, and more at large set out in the contract duly executed, the various banks and trust companies (including the complainant) of the city of Louisville paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commission heretofore referred to. This was done without prejudice to the rights of the banks and trust companies, and was not to be deemed a waiver by the banks or trust companies of any of their claimed rights, but was done to prevent confusion from coming into the management of the sinking fund, as the taxes against the banks claimed by the city had been transferred to the sinking fund of said city. It was agreed that these payments should not last longer than the final decision in favor of the banks, if such decision should be rendered.

A copy of the contract aforesaid with the minutes aforesaid is filed herewith as part hereof, marked —.

The amount paid by the banks and trust companies to the city under said agreement is over $150,000, no part of which has ever been refunded by said city.

XI.

The complainant further states that with a view of testing every phase of the question so that the decision when rendered would determine the liability of every bank and trust company in the city of Louisville pursuant to the contract aforesaid, three suits

were brought. The Bank of Kentucky, whose charter was granted prior to 1856, during which year a general law was adopted reserving the right to amend or repeal all charters or amendments thereafter granted unless a contrary intent was plainly expressed, brought suit in which — represented itself and complainant. The Louisville Banking Company had a charter from the State granted subsequent to the year 1856, but before the passage of the Hewitt bill, and brought a suit in which it represented all the banks and trust companies in the city whose charters were granted by
13 the State since 1856; and the Third national bank also brought its suit in which it represented all the national banks of the city.

In these suits each of the banks set up the adoption of the "Hewitt bill" with its various provisions, and the fact that each of them had assembled their stockholders to consider the question whether or not it would accept the provisions of the Hewitt bill, and the further fact that the said stockholders, a majority of all of them acting in the affirmative, had accepted the provisions of the Hewitt bill, and had certified the same to the governor, and had thereafter regularly made the reports and payments as provided for in the Hewitt bill, and it was asserted in each case that the act of May 17, 1886, known as the "Hewitt bill," together with the action of each bank thereon accepting the same, constituted a valid and irrepealable contract, lasting during the charter life of each bank and that the action of the State in undertaking to subsequently tax the banks by a different method and in a more onerous way, was in violation of the Federal Constitution, which forbids a State from passing a law impairing the obligation of a contract. Such proceedings were had that the Jefferson circuit court adjudged that the Bank of Kentucky had a contract in the Hewitt bill which was irrepealable, but that the Louisville Banking Company and the Third national bank did not have, and the petitions of these two banks were each dismissed. From the judgments of the Jefferson circuit court the city of Louisville prosecuted its appeal against the Bank of Kentucky; and the Louisville Banking Company and the Third national bank each prosecuted its appeal against the city of Louisville. These suits, though really against the city of Louisville, were each brought against R. H. Thompson, judge of the police court of the city of Louisville, that being the method pointed out by the law governing cities of the first class, as a means of testing the validity of any city ordinance.

In the court of appeals, which is the court of final resort in the State of Kentucky, the city of Louisville was represented by its corporation counsel and the Commonwealth of Kentucky appeared by its attorney general and by oral argument and printed
14 brief opposed the contention of the several banks. The city and the State through their respective official attorneys both insisted that none of the banks or trust companies had any contract under the "Hewitt bill," and that if they did have at one time, the State had a perfect right to retire from it under the sixth section of the article relating to banks, which declared that this "act shall

be subject to the provisions of section 8, chapter 68, of the General Statutes."

The only questions which were submitted to the circuit court and the court of appeals, were—

1st. Whether or not the Hewitt bill, coupled with the acceptance thereof by the several banks and trust companies, and the payment of taxes thereunder, constituted a contract between the State and the several banks and trust companies.

2d. If it did, then what was the extent of the duration of that contract.

It was contended by the banks and trust companies, first, that they did have a contract growing out of the acceptance of the Hewitt bill, and second, that the contract was irrepealable by the State and lasted throughout the corporate existence of the several banks and trust companies. These being the only questions involved, the court of appeals of Kentucky after a most elaborate argument, and the most thorough and painstaking consideration, determined and adjudged in accordance with the contention of the several banks and trust companies—

First. That the "Hewitt bill" and the acceptance thereof and the action thereunder by the banks did constitute a contract between the banks and the State, and,

Second. That this contract was irrepealable in its nature and lasted throughout the charter existence of the several banks and trust companies.

Upon the issuing of said mandate in the cases of the Louisville Banking Company and Third national bank judgments were entered in the Jefferson circuit court, in pursuance to said mandate and the respective prayers of said petitions.

Certified copies of said orders are also filed with the tran-
15 script of the records in the cases above named. Wherefore the complainant pleads and relies upon said former adjudication as a bar to any further claim by or on behalf of the city of Louisville against the complainant for taxes except under and in accordance with said act of May 17, 1886, known as the "Hewitt bill."

## XII.

The complainant stated that the said board of valuation and assessment in July, 1893, valued its capital stock at $697,902.20 and in July, 1894, at $715,007.41; and that the tax rate for the city of Louisville in 1893 was $2.17; in 1894 it was $1.88; in 1895, $1.88; in 1896, $1.85; and in 1897, $1.85; so that the complainant says that the amount of taxes which it would have to pay under the board of valuation and assessment law, over and above what it would have to pay under the Hewitt law would be at least $10,000 per annum.

## XIII.

Complainant says that this scheme of taxation violates the contract between it and the State in its charter and the amendments thereto and violates the contract made between it and the State

under the Hewitt law, and is very largely in excess of the taxation provided for by it- charter or by said Hewitt law; and the act of the legislature of Kentucky instituting such a method of taxation is violative of the Constitution of the United States, and particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract; and is void.

XIV.

The said method of taxation is also violative of the constitution of the State of Kentucky, in this, that by the said constitution of the State of Kentucky it is expressly provided that the General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation but may, by gen-
16 eral laws, confer on the proper authorities thereof respectively the power to assess and collect such taxes; in this, that the said law provided for an assessment of the capital stock of corporations, among others banks, by a State board of valuation and assessment, and provided for the certification of such values by the State board to counties and municipalities where any of such capital stock is situated or franchises employed; giving to said State board the right to apportion the same among the taxing districts, and providing that the corporation shall pay to such taxing district local taxes thereon, whereas the said defendant, The City of Louisville, has no power to impose any taxes whatever on the franchise of the complainant and has never caused any valuation to be made of complainant's intangible property or of its franchises.

XV.

The plaintiff further states that it having complied with the provisions of said Hewitt law and the adjudication of the court of appeals for both the years 1893 and 1894, hereinbefore mentioned, it is inequitable now to allow the defendant to collect any taxes from it even though there may be subsequent to the day of complainant's payment aforesaid a change in the ruling in regard to the law of Kentucky on these subjects.

XVI.

The complainant further states that the said defendant has power under its charter where taxes are due to it to cause a warrant to issue and distraint to be made by one of its officers and under such distraint, the personal property of the tax-payer to be taken and sold under processes of garnishment served upon all persons, debtors and such tax-payers; and in this way the complainant says that the defendant has power under the law to harass and vex the complainant in order to coerce this unjust demand of defendant and to throw into confusion its transactions and to cast a cloud upon its
17 title to its personal property and create great disturbance and confusion in regard to indebtedness to it of the various persons with whom it had dealings and to whom it has loaned money.

XVII.

The complainant has always been ready to and has always paid all the taxes due by it under the provisions of the Hewitt act, among other things, has paid to the defendant, The City of Louisville, taxes upon the real estate used for its banking purposes, and it will be ready, whenever any further taxes become due, to pay the same in accordance with the law.

XVIII.

The premises considered, the complainant says that the defendant, The City of Louisville, is threatening to and unless restrained by this honorable court will proceed to endeavor to collect the said taxes for the years 1893 and 1894, under the valuation of the complainant's capital stock made by the State board of valuation and assessment as aforesaid, and will put into operation against the complainant the provisions of law authorizing it to make collections, all of which will be illegal, in violation of complainant's contract and to the great detriment of the complainant in its property and franchises; and from these threatened wrongs the complainant has no remedy at the common law and its only remedy is by a bill in equity.

XIX.

The premises considered, complainants pray that the said City of Louisville be perpetually enjoined and restrained from endeavoring to collect any taxes upon the said returns of the board of valuation and assessment as hereinbefore set out, and from taking any proceedings to that end, by way of distraint or bringing suit or otherwise, and that the said complainant be declared as not indebted to the said defendant on account of such taxes; and the com-
18 plainant prays that its contract may be fully established, and that it be declared that having conformed to its said contract as hereinbefore set out, by making the payments under the Hewitt law, no other or further taxes can be exacted from it under any form or by any authority.

May it please your honors to grant unto your complainant a writ of subpœna, under proper authority, to be issued against the said City of Louisville, commanding it, under suitable penalty, to be therein fixed, and upon a day therein named to appear and answer to this bill of complaint, but not under oath, answer under oath being waived; and to stand to and abide by all orders and decrees that the court may enter in the premises; and the complainant will ever pray for this and all other appropriate relief.

HUMPHREY & DAVIE,
*For Complainant.*

STATE OF KENTUCKY, }
*County of Jefferson,* } *sct:*

M. Carey Peter states that he is the president of the complainant; that the facts stated herein, so far as they are stated from his per-

sonal knowledge, are true; and, so far as stated upon information, are by him believed to be true.

M. CAREY PETER.

Subscribed and sworn to before me by M. Carey Peter this 17th day of April, 1897.

R. A. BATMAN,
*N. P., J. Co., Ky.*

My commission expires Jan'y 23, 1900.

Upon which bill of complaint there issued the following subpœna in chancery:

The President of the United States of America to the City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America, for the district of Kentucky, 19 at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court, by the president, directors and company of the Bank of Louisville, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest:

[SEAL.]

THOS. SPEED,
*C. C. C., K. D.,*
By HENRY F. CASSIN,
*His Deputy.*

MEMORANDUM.—The defendant is to enter its appearance in the suit in the clerk's office, on or before the 7th day of June next, the day at which the writ is returnable, otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
*His Deputy.*

Upon which the marshal made the following return:

Executed April 24th, 1897, on the City of Louisville by delivering a copy of within spa. in ch'y to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
*United States Marshal,*
By R. E. HAWES, *D. M.*

Fees, $2.00.

20 And on May 27th, 1897, came the complainant by its counsel; came also the defendant by its counsel. The parties by their counsel filed a stipulation herein:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant. } No. 6558. Stipulation.

It is stipulated and agreed that the defendant, City of Louisville, may file a demurrer to the complainant's bill, and an answer at the same time, without waiving the demurrer.

HUMPHREY & DAVIE,
*Counsel for Complainant.*
H. L. STONE,
*Counsel for Defendant, City of Louisville.*

Came again the defendant by its counsel and filed its demurrer to the bill of complaint herein:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant. } No. 6558. In Equity.

*The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of Bank of Louisville, Complainant.*

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the same *is* therein set forth and alleged, demurs to said bill, and for cause of demurrer, states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

21 2. That the said bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court, whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
*City Attorney, Solicitor for Defendant, City of Louisville.*

I hereby certify, as counsel for the defendant, City of Louisville,

in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,
*City Attorney, Solicitor for Defendant, City of Louisville.*

STATE OF KENTUCKY, *Jefferson County,* } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
*Notary Public, Jefferson County, Kentucky.*

22 Came again the defendant, by its counsel, and filed its answer herein:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant. } No. 6558. In Equity.

*The Answer of The City of Louisville, Defendant, to the Bill of Complaint of The Bank of Louisville, Complainant.*

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering states that the limit on the rate of taxation to be paid to the State, provided for in section fifteen (15) of complainant's original charter, approved February 2, 1833, and that the same should be in full of all tax and bonus, was an immunity from local taxation, which expired with the complainant's original charter life, as extended by the legislature, on January 1, 1862, and the amendments to complainant's original charter, approved subsequent to February 14, 1856, whereby extensions of its charter life, and like immunity from local taxation, were granted unto the complainant for twenty and twenty-five years respectively, came within the purview of the act of the legislature of the State of Kentucky, approved February 14, 1856, and were by the provisions of the last-named act subject to amendment or repeal at the will of the legislature.

This defendant denies that the tax of fifty cents on each share of stock of the complainant was, when fixed by the act of February 12, 1836, referred to in complainant's bill, or at any time since, largely or at all in excess or as much as the ordinary rate of taxa-
23 tion, State and local, paid by other moneyed capital or property in the State of Kentucky.

This defendant denies that by the settled course of decision of the highest court of the State of Kentucky, the meaning of the provisions in complainant's charter, and the amendments thereto, has been fixed and determined, or that by reason thereof the complainant has an inviolable contract with said State, or that said provisions constitute a limitation on the legislative power of said State to provide for the taxation of plaintiff's property by the municipal subdivisions of said State, or that said provisions prevented such municipal subdivisions from taxing the real estate, or other property of the complainant.

This defendant denies that the complainant has since November 11, 1892, paid in full to this defendant the municipal tax on its real estate and other property.

This defendant states section six (6), article two (2), of said act of May 17, 1886, referred to in complainant's bill, pertaining to the taxation of banks, expressly provided that said act (meaning article two (2) therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: Provided, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6), article two (2), of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal, at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks from county and municipal taxation therein provided for, and a contrary intent was not therein plainly expressed.

24 This defendant further states that by section five (5) of article twelve (12), of said act of May 17, 1886, all other acts, general and special, and parts of acts, inconsistent therewith, or not in conformity therewith were repealed.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an ad valorem tax was adopted under the authority of the statute entitled "An act for the government of cities of the first class," approved July 1, 1893, or in pursuance thereof, although it was

claimed such authority existed under said act when said ordinance was adopted.

This ordinance was held to be in violation of the State constitution and void by the court of appeals of Kentucky, May 5, 1895, in the case of Levi, &c., *v.* City of Louisville, 97 Ky. Rep., 394.

This defendant denies that it was agreed between the city of Louisville and the commissioners of the sinking fund of the city of Louisville upon the one part, and the said banks and trust companies, including the complainant, upon the other, that pending the litigation concerning the validity of said ordinance providing for a license tax upon said banks and trust companies, payments and loans would be made to said commissioners of the sinking fund, in the manner or upon the terms and conditions, as stated in complainant's bill, or that this defendant agreed that said litigation should be inaugurated, or that such alleged payments or loans to said commissioners of the sinking fund should be without prejudice to the alleged rights of said banks and trust companies, or either of them.

This defendant denies that it agreed, as alleged in complainant's bill, to the selection of any bank or company to test the questions involved in said litigation, or that this defendant made, entered into, or was a party to said alleged contract or agreement, written or verbal, with respect to said litigation over the validity of said license tax, or the ordinance providing for the collection thereof from the banks and trust companies in the city of Louisville, or that said banks and trust companies should be divided into three classes, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

This defendant denies that it was understood that the trust or title companies, which are alleged to have accepted the provisions of the Hewitt bill would fall in said class "B," or that this defendant agreed that if any bank in any class should eventually fail to establish the existence or validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, or that this defendant agreed that if any bank of any class should succeed in establishing the alleged contract, or the validity thereof under the Hewitt bill, that that should exempt all banks and trust companies, or any bank or trust company falling within that or any of said alleged classes from the payment of taxes, except as provided in the Hewitt bill.

This defendant denies that said alleged agreement, an alleged copy of which, or the substance of which is filed with complainant's bill marked "A," was signed by the attorney for the city of Louisville under the authority or direction of the mayor, or that this defendant executed or delivered said alleged contract or agreement, or that the same was ever authorized, ratified, or approved by the general council and mayor of the city of Louisville, and said alleged agreement or contract set forth in said copy, marked "A," is

not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant, it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant, to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled "An act for the
26 government of cities of the first class," approved July 1, 1893, to levy and collect its municipal taxes.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been, a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together, had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations, or covenants, or either of them, contained in said alleged agreement or contract, at the time, in the manner, or under the circumstances alleged in complainant's bill, or otherwise.

This defendant denies that said alleged agreement or contract was duly executed, or on the faith or in reliance thereon, the various banks and trust companies of the city of Louisville, including the complainant, or either of them, paid into the said sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the alleged minutes of said commissioners of the sinking fund; or that, at a still later date, the said banks and trust companies, except those already involved in the alleged test cases, paid the whole amount of the taxes claimed against them by this defendant, without reservation, until the question should be finally disposed of, or that this was done without prejudice to the alleged rights of said banks and trust companies, or was not to be deemed a waiver by them of any of their claimed rights, or that the same was done to prevent confusion from coming into the management of said sinking fund, or that the taxes against banks claimed by the city had been transferred to the sinking fund of said city, except as provided for in said license-tax ordinance, which was invalid and unconstitutional, because the license tax aforesaid was and was intended to be, by said
27 ordinance in lieu of the ad valorem tax levied upon all other assessed, individual and corporate, tangible and intangible, property in the city of Louisville, as required by law and in the constitution of the State of Kentucky.

This defendant denies that it made any agreement that the said alleged payments to said sinking fund should not last longer

than the alleged final decision in favor of the banks, if such decision should be rendered, or that the amount paid by the banks and trust companies to this defendant, or said commissioners of the sinking fund, under said alleged agreement, was or is over $150,000.

This defendant denies that, with a view of testing every phase of the question, or so that a decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to said alleged contract, or that there was any contract with this defendant to do so, or that the Bank of Kentucky in the suit it brought represented the Bank of Louisville, or that the Louisville Banking Company in the suit it brought represented all or either of the other banks and trust companies in the city whose charters were granted by the State since 1856, or that the Third national bank, in the suit brought by it, represented all or either of the other national banks of the city.

This defendant denies that it was a party to said suits brought by the Bank of Kentucky, Louisville Banking Company, and the Third national bank, or either of them, or that this defendant prosecuted an appeal from the judgment of the Jefferson circuit court against the Bank of Kentucky, or that either the Louisville Banking Company or the Third national bank prosecuted an appeal from the judgment of said court against this defendant, or that either of said three suits were really against the city of Louisville; or that in the court of appeals this defendant was represented by its corporation counsel, or that said counsel represented any party in either of said cases in said court or the Jefferson circuit court, except R. H. Thompson, judge of the police court of the city of
28 Louisville, and, indirectly, said commissioners of the sinking fund, for whom he was then the regularly employed attorney, and to whom the license tax against said banks and trust companies, under the ordinance aforesaid, was made payable.

This defendant denies that it was a party to the record in the court of appeals on either of said three appeals, or as such was represented in that court by its official attorney.

This defendant states that the records in said three cases will show what questions were submitted to the circuit court and the court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts, and this defendant denies all statements in complainant's bill inconsistent with the records aforesaid. It is true, however, that the court of appeals, on June 1, 1895, decided on said three appeals that the license tax for the fiscal year ending August 31, 1894, fixed by the ordinance aforesaid, was invalid and not enforceable against the Bank of Kentucky, Louisville Banking Company, and the Third national bank, which had complied with the provisions of the act of March 17, 1886, and that the provisions of the constitution of the State of Kentucky, adopted September 28, 1891, and of the general revenue law, approved November 11, 1892, did not repeal the provisions of article two (2) of the Hewitt bill, with respect to said three banks, and that said three banks had an irrepealable contract with the State to pay

their taxes, as provided in the Hewitt bill; and in pursuance of said decision the said judge of the police court of the city of Louisville was prohibited from taking any further steps or proceedings upon warrants issued against said three banks and pending in said police court for carrying on a banking business during the fiscal year ending August 31, 1894, without paying the license tax, as provided in the ordinance aforesaid.

This defendant denies that said former adjudication constitutes a bar to any further claim by or on behalf of the city of Louisville for ad valorem taxes, or other taxes not involved in said actions against said three banks which instituted said actions, or a bar
29 to any claim for ad valorem taxes by or on behalf of this defendant against complainant, or either of the other banks and trust companies in the city of Louisville provided, or in the event the court of appeals of the State of Kentucky, at any time should overrule its said decision, rendered on June 1, 1895, in the actions aforesaid, and decide that the banks and the trust companies in said State, have no such irrepealable contract, and are bound to pay taxes on their property, tangible and intangible, to the State and to the counties and municipalities in which their places of business are located, at the same rate fixed therein as against individuals and all other corporations, in accordance with the provisions of the State constitution of September 28, 1891, and said general revenue law of November 11, 1892, set forth in complainant's bill.

This defendant denies that the amount of taxes which it would have to pay under the board of valuation and assessment law over and above which it would have to pay under the Hewitt law would be as much as $10,000.

This defendant denies that the scheme of taxation provided for in the general revenue law of November 11, 1892, violates the alleged contract alleged to have been made between the complainant and the State in its charter and the amendments thereto, or violates the alleged contract alleged to have been made between it and the State under the Hewitt bill; or that there was any irrepealable contract made between the complainant and the State in the complainant's charter and the amendments thereto, or under the Hewitt bill, or that the act of the legislature of Kentucky, of November 11, 1892, instituting such method of taxation, is violative of the Constitution of the United States, or particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract, or that said act is void, or that it is violative of the constitution of the State of Kentucky in that, by the said constitution, it is expressly provided that the General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may by general laws confer on the proper authorities thereof, respectively the power to assess and col-
30 lect such taxes, or, in that, the said law of November 11, 1892, provides for an assessment of the capital stock of corporations, among others, banks, by a State board of valuation and assessment, and provides for the certification of such value by the State board to the counties and municipalities where any such capital

stock is situated or franchises employed giving said State board the right to apportion the same among the taxing districts and providing that the corporation shall pay to such taxing districts local taxes thereon; or that this defendant has no power to impose any taxes whatever upon the franchise or intangible property of the complainant.

This defendant states that the court of appeals of Kentucky has construed said provision of the constitution of said State, which is section one hundred and eighty-one (181) thereof, as meaning that the General Assembly shall not impose or fix the amount or rate of taxes for the purposes of any county, city, town, or other municipal corporation; and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that by reason of the complainant's compliance with the provisions of the said Hewitt bill, under an alleged adjudication of the court of appeals for both of the years, or any year mentioned in complainant's bill, it is now inequitable to allow this defendant to collect any taxes from it, even though there may be, subsequent to the date of complainant's alleged payments as aforesaid, a change in the ruling in regard to the law of Kentucky on these subjects.

This defendant denies it has power under the law to harass or vex the complainant in order to coerce any alleged unjust demand or demands, or to throw into confusion complainant's transactions, or to cast a cloud upon its title to its personal property, or to
31 create great or any disturbance or confusion in regard to the indebtedness to it of the various persons, or any person, with whom it has had dealings, or to whom it has loaned money.

This defendant denies that it was at the institution of this action, or is now, threatening to collect the said taxes for the years 1893 and 1894, under the valuations of the complainant's capital stock, or intangible property, made by the State board of valuation and assessment, or will put into operation against the complainant the provisions of the law authorizing it to make collections, or that it will collect, or attempt to collect, from the complainant the taxes aforesaid, or any taxes held to be unlawful by said decision of the court of appeals of June 1, 1895, affirming the judgment of the Jefferson circuit court in said case of the Bank of Kentucky against R. H. Thompson, judge of the police court of the city of Louisville, or under the revenue law of November 11, 1892, so long as said decision shall be not overruled and remain in full force and effect, or that it has threatened or is threatening to do any illegal act, or act in violation of complainant's alleged contract, or to the great or any detriment of the complainant in its property or franchises, or that complainant has such alleged contract with the State of Kentucky, or that from these alleged threatened wrongs, or any threat

ened wrong, the complainant has no remedy at the common law, or that its only remedy is by a bill in equity.

This defendant denies it has threatened, or is threatening, the complainant with any wrong or wrongs.

This defendant for further answer and defense to complainant's bill states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *v.* Daviess County, and other bank-tax cases, wherein the same legal questions were involved and issues were made, as in the case referred to in the complainant's bill of complaint against R. H. Thompson, judge, &c., rendered a decision in which the former decisions of said court in said case delivered June 1, 1895; and in the cases of Franklin County Court *v.*

Deposit Bank of Frankfort, Same *v.* Bank of Kentucky, and
32 other bank-tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore decided that no bank, State or national, trust company, or other similar institution, in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of or compliance with those provisions, and that the same with respect to all said banks and similar institutions in the State were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and all banks were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2), of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of the four old banks, originally chartered prior to the last-named date, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, hereinabove referred to as section eight (8), chapter sixty-eight (68), of the General Statutes of the State of Kentucky, and were all subject to amendment or repeal by and at the will of the legislature.

This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to bank taxation, were repealed.

33 This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until

the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have already been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose, on its part, to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896 and 1897 with the auditor or State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant, therefore, submits that the complainant was not, at the institution of this action, and is not now, being subjected to any false or illegal claim or claims, nor to any suit or suits, nor will it suffer any irreparable injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and
34 agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged assessment of the franchise of the complainant until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
*City Attorney, Solicitor for Defendant, City of Louisville.*

STATE OF KENTUCKY, } *sct:*
*Jefferson County,* }

Personally appeared before me, John F. Greene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant City of Louisville, and the facts stated in the foregoing answer so

far as stated from his personal knowledge are true, and so far as stated from information, he believes the same to be true.

GEORGE D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
*Notary Public, Jefferson Co., Kentucky.*

35 And on another day of said court, to wit, on May 28th, 1897.

Circuit Court of the United States, District of Kentucky.

FRIDAY, *May* 28, 1897.

BANK OF KENTUCKY
*vs.*
CITY OF LOUISVILLE.

LOUISVILLE TRUST COMPANY
*vs.*
CITY OF LOUISVILLE.

FIDELITY TRUST & SAFETY VAULT CO.
*vs.*
CITY OF LOUISVILLE.

GERMAN SECURITY BANK
*vs.*
CITY OF LOUISVILLE.

CITIZENS' NATIONAL BANK
*vs.*
CITY OF LOUISVILLE.

FIRST NATIONAL BANK
*vs.*
CITY OF LOUISVILLE.

THIRD NATIONAL BANK
*vs.*
CITY OF LOUISVILLE.

36 FARMERS' & DROVERS' BANK
*vs.*
CITY OF LOUISVILLE.

BANK OF COMMERCE
*vs.*
CITY OF LOUISVILLE.

LOUISVILLE CITY NATIONAL BANK
*vs.*
CITY OF LOUISVILLE.

UNION NATIONAL BANK
*vs.*
CITY OF LOUISVILLE.

LOUISVILLE BANKING COMPANY
*vs.*
CITY OF LOUISVILLE.

WESTERN BANK
*vs.*
CITY OF LOUISVILLE.

BANK OF LOUISVILLE
*vs.*
CITY OF LOUISVILLE.

This day came the complainants in each of the above-entitled causes and filed herein notices duly served on the defendant, and moved the court to grant them severally an injunction, until the further order of the court, enjoining and restraining the de-
37 fendant, The City of Louisville, from taking any steps for the enforcement of the taxes set forth in the said bill of complaint.

And came the said City of Louisville, by H. L. Stone, its city attorney, and objected to the said motion, and the same coming on to be heard, was submitted, and the court not being advised, takes time.

And at the same time, this cause came on to be heard upon the demurrers, general and special, heretofore filed herein by the said City of Louisville, and the same were argued by counsel, and submitted to the court, and the court not being advised takes time.

And on June 5, 1897, came again the parties, by their counsel, and filed their stipulation herein:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY, BANK OF LOUISVILLE, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant.

It is agreed that the resolutions of the stockholders of the Bank of Louisville accepting the provisions of the Hewitt law, filed in the cause of The President, Directors and Company of the Bank of Louisville *vs.* Stone, &c., No. 6557, and the record in the case of Bank of Kentucky *vs.* R. H. Thompson, judge of the Louisville city court, filed in the case of President, Directors and Company of the Bank of Kentucky *vs.* Stone, No. 6555, in this court, shall be read as if filed herein, as an exhibit with complainant's bill, subject to all legal exceptions.

H. L. STONE, *City Att'y.*
HUMPHREY & DAVIE,
*For Compl't.*

38 And on the 4th day of June, 1898, the following order was entered:

It is ordered by the court that the preliminary injunction heretofore granted in this case be, and the same is hereby, continued until the 25th day of June, 1898.

And on the 25th day of June, 1898, the following order was entered:

This cause coming on to be heard, *and* the court, being advised, delivered its opinion herein, which is ordered to be filed. It is now adjudged, ordered, and decreed by the court that the demurrer of the defendant, The City of Louisville, to the bill of complaint be, and it is hereby, overruled; to which the said City of Louisville excepts.

2. Until the further order of the court the said defendant, The City of Louisville, is enjoined and restrained from attempting in any manner to enforce against the complainant the taxes mentioned in the bill of complaint herein for the years 1893 and 1894.

And then came the complainant and filed herein its general replication.

Replication above referred to is as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY OF THE Bank of Louisville, Complainant, *vs.* CITY OF LOUISVILLE, Defendant. } Replication to Answer of City of Louisville.

39 This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HUMPHREY & DAVIE, *For Com.*

And on the 14th day of July, 1898, the following order was entered:

This day came the defendant and filed exceptions to the depositions of H. S. Barker and J. H. Leathers and the exhibits filed therewith and to the other documentary and record evidence offered and read by complainant on the final hearing of this cause; which exceptions were overruled by the court; to which ruling of the court defendant excepted.

Exceptions above referred to are as follows:

40 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

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| BANK OF LOUISVILLE, Complainant, *versus* CITY OF LOUISVILLE, Defendant. | #6558. Exceptions to Complainant's Depositions, Exhibits, Documentary and Record Evidence. |

The defendant, City of Louisville, excepts to the depositions, exhibits, documentary and record evidence offered and read in evidence by complainant on the final hearing of this cause as follows:

1. Questions Nos. 6, 7, 8, 9, 10, 11, 12, 13, 19, 20, 24, and 25 of the main examination in the deposition of H. S. Barker call for incompetent and irrelevant testimony, and the answers thereto are incompetent and irrelevant testimony against this defendant.

2. The two exhibits filed with said Barker's deposition, marked Exhibit "Copy" and Exhibit "A," are incompetent and irrelevant evidence against this defendant.

3. The answers to questions Nos. 75, 76, and 82 of the cross-examination in the deposition of said Barker are not responsive to the questions asked, and, so far as they detail or refer to conversations or matters not shown by the proceedings of the commissioners of the sinking fund of record on their journal or minute book, said answers are incompetent and irrelevant testimony against this defendant.

4. The third paragraph of the answer of the commissioners of the sinking fund in the suit of The German Security Bank
41 against said commissioners, copied into the deposition of said Barker on his own motion, is incompetent and irrelevant testimony against this defendant.

5. Questions Nos. 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 24, 25, and 26 of the main examination in the deposition of J. H. Leathers call for incompetent and irrelevant testimony, and the answers thereto are incompetent and irrelevant testimony against this defendant.

6. Exhibits Nos. 1, 2, 3, 4, and 5, made part of said Leathers' deposition, are incompetent and irrelevant testimony against this defendant.

7. The record in the suit of The Bank of Kentucky against R. H. Thompson, judge of the police court of Louisville, is incompetent and irrelevant evidence against this defendant.

HENRY L. STONE,
*City Attorney, Solicitor for Defendant, City of Louisville.*

And on the 14th day of July, 1898, the following decree was entered:

This cause having come on to be heard and for final decree, the parties filed stipulations Nos. *L* & 2 & complainant read, 1st, its bill of complaint; 2nd, the exhibits filed therewith containing resolutions of the stockholders; 3rd, the record of the proceedings in the

case of Bank of Kentucky *vs.* R. H. Thompson, judge, &c., lately pending in the Jefferson court of common pleas and in the court of appeals of Kentucky, being an exhibit to the bill of complaint in the case of The President, Directors, & Company of the Bank of Kentucky *vs.* Samuel H. Stone, &c., pending in this court;
42 4th, stipulation No. 1 between the complainant and the defendant; 5th, deposition of Henry S. Barker, taken in the case of The Bank of Commerce *vs.* Samuel H. Stone, &c., pending in this court, with the exhibits thereto attached; 6th, deposition of John H. Leathers, taken in the same case, with the exhibits thereto attached.

The defendant, The City of Louisville, read on the hearing, 1st, its answer; 2nd, stipulation No. 2 between the complainant and the defendants, with documents therein referred to; 3rd, deposition of J. Moss Terry, taken in the case of Bank of Commerce *vs.* Samuel H. Stone, &c., pending in this court, with exhibits thereto attached.

And the court being now advised, it is adjudged, ordered, and decreed as follows:

I. That the complainant is entitled to the benefit of the proceedings taken in the case of President, Directors, & Company of the Bank of Kentucky *vs.* R. H. Thompson, in the Jefferson court of common pleas, and proceedings taken in the said cause on appeal to the court of appeals of Kentucky, wherein R. H. Thompson and The City of Louisville were appellants and the said President, Directors, & Company of the Bank of Kentucky was appellee, to the same extent as if the complainant had been a party to the said proceedings.

II. That it is *res adjuducata* between the complainant and the city of Louisville that the complainant is entitled to be taxed under what is known as the Hewitt revenue law and not otherwise, and it is therefore adjudged, ordered, and decreed that the defendant,
The City of Louisville, is perpetually enjoined and re-
43 strained from collecting any tax against the complainant under the assessments for the years 1893 and 1894, as set out in the complainant's bill, and that any provision of the constitution of the State of Kentucky and any provision in the act of November 11, 1892, or of the city charter which may be construed as authorizing the levy or assessment of any tax against the complainant, its rights, properties, or franchises, or shares of capital stock other than as allowed by the said Hewitt law is, during the corporate existence of the complainant, unconstitutional and void, and the complainant and its shares of stock are exempt from all other taxation whatsoever, except as prescribed by the said Hewitt law, so long as said tax shall be paid during the corporate existence of the complainant.

III. That the complainant do recover of the defendant its costs herein expended.

The defendant now in open court prays an appeal from this decree to the Supreme Court of the United States, which is allowed. The complainant waives citation upon said appeal in open court. The defendant filed herein its assignment of errors, and it is ordered that said appeal may be perfected by the execution of a bond

by the defendant, with surety, to be approved by the clerk, in the penalty of $1,000,

Stipulations above referred to are as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY OF THE BANK OF LOUISVILLE, Complainant, *vs.* CITY OF LOUISVILLE, Defendant. } Stipulation No. 1.

44 It is agreed between the complainant and the defendant herein as follows:

1. That the complainant complied with the Hewitt law by making and delivering the agreement and consent therein provided for.

2. That the complainant may read on the hearing the record of the proceedings in the case of The Bank of Kentucky *vs.* R. H. Thompson, in the Jefferson court of common pleas, and the same case on appeal in the court of appeals of Kentucky, City of Louisville and R. H. Thompson, appellants, *vs.* Bank of Kentucky, appellee, the same being filed in a case pending in this court styled President, Directors, & Company of the Bank of Kentucky *vs.* Samuel H. Stone, &c.

HUMPHREY & DAVIE,
*Solicitors for Complainant.*
H. L. STONE, *City Att'y.*

Stipulation No. 2 is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant, *versus* CITY OF LOUISVILLE, Defendant. } #6558. Stipulation No. 2.

I. It is stipulated and agreed between the complainant and the defendant, City of Louisville, that the following ordinances of the said city shall be read as evidence in its behalf on the trial of this action, and the same are made part of the record as though copied and fully set out in this stipulation, to wit:

1. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1893," approved Decem-
45 ber 17, 1892 (Second Biennial Compilation of the Ordinances of the City of Louisville, 1897, pp. 248–250).

2. An ordinance entitled "An ordinance relating to assessments," approved August 9, 1893 (*ib.*, pp. 219–222).

3. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1894," approved December 21, 1893 (*ib.*, pp. 250–252).

4. An ordinance entitled "An ordinance concerning certain licenses in the city of Louisville," approved January 29, 1894, being the same ordinance, referred to in complainant's bill, requiring banks to pay to the sinking fund of the city of Louisville an annual license of four per cent. (4 %) on their gross earnings, a copy of which ordinance is hereto attached, marked Exhibit "L."

5. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1895," approved December 22, 1894 (*ib.*, pp. 256–'7).

6. An ordinance entitled "An ordinance providing for the reprospective assessment of omitted personal property," approved July 9, 1895 (*ib.*, pp. 204, 205).

7. An ordinance entitled "An ordinance providing for crediting ad valorem tax bills on personalty by the amount paid to the sinking fund as license on same," approved August 6, 1895 (*ib.*, pp. 205, 206).

8. An ordinance entitled "An ordinance concerning taxes for the fiscal year ending August 31, 1894, on all property omitted from the ordinance entitled 'An ordinance concerning the taxes for the fiscal year ending August 31, 1894,' approved December 21, 1893," approved April 9, 1897 (*ib.*, 252–256).

46 9. An ordinance entitled "An ordinance regulating the duties of the city assessor with respect to tax bills on assessments made by the State railroad commission and State board of valuation and assessment," approved April 9, 1897 (*ib.*, pp. 28, 29).

II. It is further stipulated and agreed that the "commissioners of the sinking fund of the city of Louisville" were incorporated and organized and their powers and duties are prescribed and defined by the statutes and ordinances compiled and embraced in chapter XLIII, sections 1 to 49, inclusive, Burnett's Louisville City Code, 1884, pp. 691–705, which ordinances and special statutes are made part of the record as though copied and fully set out in this stipulation, and by sections 3010 *to* 3024, Kentucky Statutes, edition of 1894.

III. It is further stipulated and agreed that the meeting of the next General Assembly after the passage of the Hewitt act, on May 17, 1886, was required by statute at the latter date to be, and was in fact, on Friday, December 30, 1887.

IV. That the complainant's franchise was prior to the institution of this action assessed by the State board of valuation and assessment under the act of November 11, 1892, for the year 1893 at $697,902, and for the year 1894 at $715,007; that these assessments were duly certified by the State auditor to the clerk of the Jefferson county court and by the latter to the collecting officer of the defendant, City of Louisville, for collection, and that the assessor, under the ad valorem tax levy ordinances of the defendant city, has since April 12, 1897, made out on said respective assessments and

47 listed with the tax receiver for collection against the complainant a tax bill for the year 1893, at the rate of 74½ cents on each $100, for $5,199.37, and a tax bill for the year 1894,

at the rate of $1.88 on each $100, for $13,442.13, both of which tax bills remain unpaid.

V. It is agreed by counsel for complainant and defendant herein that the corporate existence which complainant had when it accepted the provisions of the Hewitt act expires, by then existing statute, on the 1st day of January, 1903.

VI. It is agreed that all depositions and evidence taken by complainant and defendants in case No. 6567 of Bank of Commerce, complainant, against S. H. Stone, &c., defendants, in this court shall be read and have the same effect (subject to all legal exceptions by either party for competency or irrelevancy) as though the same were taken by the parties respectively in this action.

HUMPHREY & DAVIE,
*Solicitors for Complainant.*
H. L. STONE,
*City Attorney, Solicitor for Defendant,*
*City of Louisville.*

Stipulation No. 3 is as follows:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

PRESIDENT, DIRECTORS, & COMPANY OF THE Bank of Louisville, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant.
} Stipulation # 3.

It is agreed between the parties complainant and defendant herein that in copying this record for the Supreme Court of the United States the clerk may omit all such parts of the record
48 as are contained in the copy made for the Supreme Court of the record in the case of The Bank of Commerce *vs.* Samuel H. Stone, &c., and President, Directors, & Company of the Bank of Kentucky *vs.* Samuel H. Stone, &c. Each party is to be at liberty to refer to these records for these depositions and documents in exactly the same way as if they were contained in this record.

HUMPHREY & DAVIE,
*For Complainant.*
H. L. STONE, *City Attorney.*

Petition and assignment of errors of the City of Louisville is as follows:

49 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant,
*versus*
CITY OF LOUISVILLE, Defendant.
} No. 6558. Petition and Assignment of Errors of the City of Louisville.

To the honorable the judge of the United States circuit court for the sixth circuit, district of Kentucky:

Now comes the petitioner and defendant, City of Louisville, and states that the record, proceedings, and decree of the court ren-

dered herein July 14, 1898, contain manifest errors to its prejudice committed, as follows, to wit:

I.

The court erred in overruling and not sustaining each ground of its demurrer to complainant's bill, and in entertaining jurisdiction of this action, and in not decreeing a dismissal of complainant's bill, because it does not contain any matter of equity whereon this court can ground any decree or give to complainant any relief against this defendant.

II.

The court erred in overruling the exceptions of the defendant, City of Louisville, to the depositions, exhibits, documents, and records offered and read in evidence by complainant on the final hearing of this cause.

III.

The court erred in decreeing that complainant has an
50 irrevocable or irrepealable contract during its corporate existence with the State of Kentucky to pay taxes only in accordance with the Hewitt act of May 17, 1886, by reason of its acceptance of the provisions of said act and the former judgment in the action of the Bank of Kentucky against R. H. Thompson, judge of the police court of the city of Louisville, in the Jefferson circuit court, common pleas division, July 24, 1894, affirmed by the court of appeals of Kentucky June 1, 1895, by which judgment further proceedings were prohibited in the prosecution of the warrant issued against said Bank of Kentucky in said police court for carrying on the business of banking without paying the license fee to the sinking fund commissioners of the city of Louisville, in violation of the ordinance of the city of Louisville of January 29, 1894, passed in pursuance of the act of July 1, 1893, for the government of cities of the first class, and in decreeing that the claims and rights of the defendant, City of Louisville, to ad valorem taxes on the assessments of complainant's franchise or intangible property, made or required to be made by the board of valuation and assessment of the State of Kentucky, under the act of November 11, 1892, for the years 1893 and 1894, on account of the alleged agreement with ex-City Attorney Barker and the commissioners of the sinking fund of the city of Louisville, were by the judgment aforesaid *res judicata*, and in decreeing a perpetual injunction against this defendant enjoining and restraining it from collecting or taking any steps to collect its taxes for said years from complainant, and during the corporate existence of the complainant, under said act of November 11, 1892, and in decreeing that the latter act, the city charter, and the State constitution, or either of them, impaired the obligation of said
51 alleged contract between complainant and the State of Kentucky, and thereby violated and was repugnant to the Constitution of the United States.

Wherefore this petition- and defendant says the said decree of the court herein is erroneous, and prays this honorable court to grant

it an appeal to the Supreme Court of the United States, to the end that said decree may be reversed, and that said errors may be corrected; and so it will ever pray.

HENRY L. STONE,
*City Attorney, Solicitor for Defendant, City of Louisville.*

52 Bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

BANK OF LOUISVILLE
*vs.*
CITY OF LOUISVILLE.

Know all men by these presents that we, The City of Louisville & The Fidelity & Deposit Company of Maryland, are held and firmly bound unto Bank of Louisville in the sum of one thousand dollars, to be paid to the said Bank of Louisville, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 16th day of July, A. D. 1898.

Whereas the above-named City of Louisville hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named City of Louisville shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF LOUISVILLE, [L. S.]
By H. L. STONE, *City Attorney.* [L. S.]
FIDELITY & DEPOSIT CO.
OF MARYLAND,
By WILLIS S. MULLEN, [SEAL.]
*Gen'l Ag't & Att'y-in-fact.*

Sealed and delivered in presence of—
HENRY F. CASSIN,
*Deputy Clerk U. S. Circuit Court.*

53 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

BANK OF LOUISVILLE, Complainant,
*vs.*
CITY OF LOUISVILLE, Defendant.
# 6558. Agreement for Record on Appeal.

The defendant having taken an appeal in this case to the Supreme Court of the United States, this agreement is now made to avoid

cost of copying and printing unnecessary parts of the record. It is therefore agreed as follows:

1. The clerk in making up the record need not copy any paper in this record which he has already copied in the record of the case of the same complainant *vs.* Samuel H. Stone, &c.

2. The two cases presenting questions so similar, it is agreed that either party may refer in this case to the record in the other case to the same effect as if such record was a part of this case.

3. The clerk need not copy the special acts relating to the commissioners of the sinking fund of the city of Louisville, nor the ordinances recited in stipulation No. 2, filed herein, but appellant's counsel may print such parts thereof as seem to him relevant in an appendix to his brief.

HUMPHREY & DAVIE,
*Solicitors for Complainant.*
HENRY L. STONE,
*City Attorney, Solicitor for Defendant.*

54 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 53 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, in accordance with the stipulation of counsel herein, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 4th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk.*

Endorsed on cover: Case No. 16,944. Kentucky C. C. U. S. Term No., 359. City of Louisville, appellant, *vs.* Bank of Louisville. Filed August 15th, 1898.